



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2023-0049; FRL-10920-02-R5]

**Air Plan Approval; Michigan; Michigan Nonattainment New Source
Review Certification for the 2015 Ozone NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, as a revision to the Michigan State Implementation Plan (SIP), Michigan's certification that its SIP satisfies the nonattainment new source review (NNSR) requirements of the Clean Air Act (CAA) for the 2015 ozone National Ambient Air Quality Standard (NAAQS).

DATES: This direct final rule will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless EPA receives adverse comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the *Federal Register* informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2023-0049 at <https://www.regulations.gov> or via email to arra.sarah@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed

from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Andrew Lee, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312)-353-7645, lee.andrew.c@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background

On October 26, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). See 80 FR 65292. Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data. This action relates to nonattainment areas in Michigan that were designated nonattainment for the 2015 8-hour ozone NAAQS on June 4, 2018.

On December 6, 2018, EPA issued a final rule entitled, "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements," which established the requirements and deadlines that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where ozone concentrations exceed the 2015 8-hour ozone NAAQS. Based on its initial nonattainment designation for the 2015 8-hour ozone standards, Michigan was required to make a SIP revision addressing NNSR program requirements. This requirement may be met by submitting a SIP revision consisting of a new or revised NNSR permit program, or an analysis demonstrating that the existing SIP-approved NNSR permit program meets the applicable 2015 ozone requirements and a letter certifying the analysis.

II. Michigan's Submittal

On January 24, 2023, Michigan submitted a SIP revision

requesting that EPA approve Michigan's certification that its existing SIP-approved NNSR regulations fully satisfy the NNSR requirements set forth in 40 CFR 51.165 for all areas not attaining the 2015 ozone NAAQS. Michigan has certified that specific sections of its NNSR rules in Part 19, New Source Review for Major Sources Impacting Nonattainment Areas, continue to meet the NNSR requirements for ozone nonattainment areas under the 2015 ozone NAAQS. Table 1 below provides the sections of Michigan's NNSR rule corresponding to the relevant requirements at 40 CFR 51.165. The Michigan rules were previously approved on May 12, 2021 (86 FR 25954). Each requirement identified in Michigan's certification has not been revised since EPA last approved it. Table 1 lists the specific provisions of Michigan's NNSR rules that address the required elements of the Federal NNSR rules:

Table 1 - NNSR SIP Rules Comparison

Federal Rule	Michigan Rule
40 CFR 51.165(a) (1) (iv) (A) (1) (i) - (iv)	R 336.2901(u) (i) (A), R 336.2901(u) (i) (A) (1), (2), (3), and (4)
40 CFR 51.165(a) (1) (iv) (A) (2) (i) - (vi)	R 336.2901(u) (i) (B), R 336.2901(u) (i) (B) (1), (2), (3), (4), (5), and (6)
40 CFR 51.165(a) (1) (iv) (A) (3)	R 336.2901(u) (i) (C)
40 CFR 51.165 (a) (1) (iv) (B)	R 336.2901(u) (i) (C) (ii)
40 CFR 51.165(a) (1) (v) (B)	R 336.2901(t) (ii)
40 CFR 51.165 (a) (1) (v) (E)	R 336.2901(t) (v)
40 CFR 51.165(a) (1) (v) (F)	R 336.2901(t) (vi)
40 CFR 51.165(a) (1) (x) (A)	R 336.2901(hh) (i) and R 336.2901(hh) (i) (D)
40 CFR 51.165(a) (1) (x) (B)	R 336.2901(hh) (ii)
40 CFR 51.165(a) (1) (x) (C)	R 336.2901(hh) (iii)
40 CFR 51.165(a) (1) (x) (E)	R 336.2901(hh) (v)
40 CFR 51.165 (a) (1) (xxxvii) (C) (1)	R 336.2901(ff)
40 CFR 51.165(a) (3) (ii) (C) (1)	R 336.2908(5) (c) (i), R 336.2908(5) (c) (i) (A) and (B)
40 CFR 51.165(a) (3) (ii) (C) (2)	R 336.2908(5) (c) (ii), R 336.2908(5) (c) (ii) (A) and (B)
40 CFR 51.165(a) (8)	R 336.2902(8)
40 CFR 51.165(a) (9) (ii) - (iv)	R 336.2908(6) (a) (i) - (v), and R 336.2908(6) (b) and (c)

III. Analysis of Nonattainment New Source Review Requirements

NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources within a nonattainment area and is required under CAA sections 172(c) (5) and 173.

As mentioned in Section I of this preamble, NNSR permit program requirements were adopted for the 2015 ozone NAAQS at 40 CFR 51.1314 as part of the 2015 SIP Requirements Rule. The minimum SIP requirements for NNSR permitting programs for the 2015 ozone NAAQS are contained in 40 CFR 51.165. The SIP for each ozone nonattainment area must contain NNSR provisions that:

- 1) set major source thresholds for nitrogen oxides (NO_x) and volatile organic compounds (VOC) pursuant to 40 CFR 51.165(a) (1) (iv) (A) (1) (i) through (iv) and (a) (1) (iv) (A) (2);
- 2) classify physical changes as a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a) (1) (iv) (A) (3);
- 3) consider any significant net emissions increase of NO_x as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a) (1) (v) (E);
- 4) consider any increase of VOC emissions in Extreme ozone nonattainment areas as a significant net emissions increase and a major modification for ozone pursuant to 40 CFR 51.165(a) (1) (v) (F);
- 5) set significant emissions rates for VOC and NO_x as ozone precursors pursuant to 40 CFR 51.165(a) (1) (x) (A) through (C) and (E);
- 6) contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a) (3) (ii) (C) (1) and (2);
- 7) provide that the

requirements applicable to VOC also apply to NO_x pursuant to 40 CFR 51.165(a)(8); 8) set offset ratios for VOC and NO_x pursuant to 40 CFR 51.165(a)(9)(ii) through (iv); and 9) require public participation procedures compliant with 40 CFR 51.165(i).

Michigan's SIP-approved NNSR program, established in Part 19, "New Source Review for Major Sources Impacting Nonattainment Areas," of the state's Air Pollution and Control rules, applies to the construction and modification of stationary sources, including major stationary sources in nonattainment areas under its jurisdiction. Michigan's submitted SIP revision includes a compliance demonstration, consisting of a table listing each of the 2015 ozone NAAQS NNSR SIP requirements from 40 CFR 51.165 and a citation to the specific provision of the rule satisfying the requirement. The submittal also includes a certification by the state that the cited rules meet the Federal NNSR requirements for the applicable ozone nonattainment designation. EPA has reviewed the demonstration and cited program elements intended to meet the Federal NNSR requirements and is approving the state's submittal because the current SIP-approved NNSR program satisfies all the 2015 ozone NAAQS SIP Requirements Rule NNSR program requirements applicable to the Michigan ozone nonattainment areas.

IV. What Action is EPA Taking?

EPA is approving Michigan's January 24, 2023, SIP revision addressing the NNSR requirements of the 2015 ozone NAAQS. EPA has concluded that Michigan's submission fulfills the 40 CFR

51.1314 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this *Federal Register* publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive relevant adverse written comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

V. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a

disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

EGLE did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within

which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this *Federal Register*, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 2, 2023.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, title 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.1170, the table in paragraph (e) is amended by

adding an entry for "Ozone (8-hour, 2015) Nonattainment New Source Review Certification" immediately following the entry for "Determination of failure to attain the 2010 SO₂ standard" to read as follows:

§ 52.1170 Identification of plan.

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(e) * * *

EPA-Approved Michigan Nonregulatory and Quasi-Regulatory
Provisions

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
* * * * *				
Ozone (8-hour, 2015) Nonattainment New Source Review Certification	Statewide	1/24/2023	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
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[FR Doc. 2023-12304 Filed: 6/8/2023 8:45 am; Publication Date: 6/9/2023]